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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

No. 282.

HELEN C. JOHNSON, HERBERT F. JOHNSON, JR., HENRIETTA J. JOHNSON, AND JOHN J. LOUIS, PARTNERS DOING BUSINESS UNDER THE FIRM NAME OF S. C. JOHNSON & SON, APPELLANTS,

VS.

ARTHUR STAR, APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TEXAS.

BRIEF FOR APPELLANTS.

SPEARMAN WEBB,
Sherman, Texas,
Counsel for Appellants.

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STATEMENT AS TO JURISDICTION OF APPEAL.

MAY IT PLEASE THE COURT:

The appellants in support of the jurisdiction of this court to review the above entitled cause on appeal respectfully represent:

A.

STATUTORY PROVISIONS SUSTAINING JURISDICTION.

The Act of February 14, 1925, 43 Stats. L. 937, United States Code, Title 28, Section 344, provides that Section 237 of the Judicial Code is amended to read in part as follows:

> "(a) A final judgment or decree in any suit in the highest court of the state in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution and treaties or laws of the United States and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."

The Act of January 31, 1928, as amended by Act of April 26, 1928, United States Code, Title 28, Section 861 (a) substituted an appeal for a writ of error in all cases.

B.

DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL.

The decree sought to be reviewed was entered on March 23, 1932 (R. p. 84).

Motion for rehearing was filed April 4, 1932 (R. p. 86), within the time prescribed by the rules of the Supreme Court of Texas. The motion for rehearing was denied April 21, 1932 (R. p. 89).

The application for appeal was presented to the Chief Justice of the Supreme Court of Texas and the appeal allowed on June 15, 1932 (R. p. 94).

On July 12, 1932, upon motion of appellants the Chief Justice of the Supreme Court of Texas granted thirty days additional time to file the certified copy of the record on appeal in the office of the Clerk of the Supreme Court of the United States, the time being extended thirty days from and after July 16, 1932 (R. p. 100).

C.

NATURE OF THE CASE AND RULING BELOW.

On March 13, 1931, the Dallas Showcase and Manufacturing Company, a corporation, while insolvent executed to Arthur Star, appellee herein, a deed of assignment for the benefit of creditors, under Title 12, Texas Revised Statutes 1925 (Assignment for Creditors Act, Art. 261-274).

Appellants are judgment creditors of the Dallas Showcase and Manufacturing Company and for the purpose of satisfying the judgment amounting to $103.05, on April 9, 1931, sued out a writ of garnishment and served it upon Arthur Star, appellee herein.

Appellee answered the writ of garnishment asserting that he received the assets of the insolvent corporation under the authority of the deed of assignment and acting under Title 12, Texas Revised Statutes 1925, he proceeded to convert the same into cash and had on hand the sum of $582.63, held by him as assignee, for

the benefit of creditors, and in trust for such creditors, and that the Dallas Showcase and Manufacturing Company had no interest therein and that the fund is not subject to garnishment for claims against the Dallas Showcase and Manufacturing Company.

In the trial court appellants brought in question the validity of Title 12, Texas Revised Statutes 1925 (Assignment for Creditors Act), on the ground that such act was suspended and superseded by the National Bankruptcy Act and was in conflict with and repugnant to Article 1, Sec. 8, cl. 4, of the Constitution of the United States, and the National Bankruptcy Act.

The trial courts held that the Texas Statute, Assignment for Creditors Act, is invalid, being in conflict with the United States Bankruptcy Act and therefore did not protect the funds in the hands of the assignee from garnishment.

The assignee appealed to the Court of Civil Appeals asserting the validity of the Texas statute and appellants herein asserting its invalidity as being in conflict with the National Bankruptcy Act and Constitution of the United States (Article 1, Sec. 8, cl. 4).

The Court of Civil Appeals upheld the Assignment for Creditors Act and held the Texas law was not in conflict with nor repugnant to the National Bankruptcy Act.

Appellants sued out a writ of error to the Supreme Court of Texas again asserting the invalidity of Title 12, Assignment for Creditors Act, as being in conflict with the National Bankruptcy Law and Article 1,

Section 8, cl. 4 of the Federal Constitution, and the Texas Supreme Court held that such Texas Assignment for Creditors Act is valid and is not in conflict with Article 1, Section 8, cl. 4, of the Constitution of the United States and the National Bankruptcy Act, and held in favor of the validity of such state law.

D.

CASES BELIEVED TO SUSTAIN JURISDICTION.

The following decisions of this court are believed to sustain the jurisdiction of this appeal:

International Shoe Co. v. *Pinkus,* 278 U. S. 261, 73 L. ed. 318.

Boese v. *King,* 108 U. S. 379, 2 S. Ct. 765, 27 L. ed. 760.

Respectfully submitted,

Spearman Webb

Counsel for Appellants.